COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
{Chapter VIII, Rule 32(2)(b)}
Description of the Case.

Criminal Appeal No. 167 of 2001
(Old No. 797 of 1986)

Harish Chandra Gauniyal

….. Appellant

Versus

Laxmi Dutt Thapliyal and another

…. Respondents

Sri Neeraj Upreti, Advocate for appellant
Sri C.D. Bahuguna, Advocate for Respondent No. 1
Sri Amit Bhatt, learned Addl. G.A. for the State

~~Approved for reporting.~~
Not approved for reporting.

Date: April 25, 2007

(Dharam Veer, J.)

Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 167 of 2001
(Old Criminal Appeal No. 797 of 1986)

Shri Harish Chandra Gauniyal
S/o Shri Kanhaiya Lal Gauniyal
R/o Village Johri, P.S. Bajpur,
District Dehradun

….. Appellant

Versus

1. Shri Laxmi Dutt Thapliyal s/o Shri Daulat Ram,
   R/o Village Johri, Police Station Rajpur,
   P.O. Garhi Cantt., District Dehradun
2. State of U.P. …..... Respondents

……..

Sri Neeraj Upreti, Advocate for appellant
Sri C.D. Bahuguna, Advocate for Respondent No. 1
Sri Amit Bhatt, learned Addl. G.A. for the State

Hon. Dharam Veer, J.

The present appeal has been filed against the judgment and order dated 20.04.1983 passed by Judicial Magistrate, Dehradun in case no.402 of 1982 acquitting the opposite party no. 1 under Section 500/211 I.P.C.

2. The brief facts of the case are that the complainant lodged a complaint on 08.09.1982 in the Court of Judicial Magistrate, Dehradun to the effect that he is resident of village Johadi and is a respectable person of Dehradun District and is partner of “Durga Industries and Trading Company”. The complainant and the accused belong to the same village and the accused is always interested in lowering the complainant and his family in public esteem and is inimical to them. Accused Laxmi Datt Thapaliyal filed a false report on 8.11.1981 of theft against him and his father with intent to defame them and later on 11.11.1981 he instituted a criminal case against them in the Court of Judicial Magistrate U/Ss 434,

427, 379, 504 and 506 I.P.C. alleging that they have cut the trees of the accused and had removed them. The said case was dismissed by the Judicial Magistrate. Against which a revision was filed in the Court of Sessions Judge, Dehradun, who also dismissed the same. The father of the complainant is a renowned Pandit of Dehradun and has good reputation in Dehradun. By the act of the accused the prestige of the complainant's father has lowered in public esteem. Therefore, he prayed for action against the accused for committing the offence punishable under Section 500 and 211 I.P.C.

3. The accused denied the allegations of the complainant and submitted that he lodged a true report against the complainant, but admitted that his complaint as well as revision against the same have been dismissed.

4. In support of its case, the complainant examined himself as P.W.1 and Ran Singh as P.W. 2 and Shamsher Singh as P.W.3

5. In his statement on oath, the complainant – P.W.1 Harish Chand – stated that Laxmi Datt lodged a report against Harish Chandra and his father on 08.11.1981 for theft and threat to kill him. On the basis of that report, Laxmi Datt filed a complaint against them. P.W.2 Ran Singh and P.W.3 Shamsher Singh have stated that the complainant is a respectable person. P.W. 3 Shamsher Singh has further stated that both the parties quarreled with each other and therefore, they are, now, not considered as respectable.

6. The lower Court has observed that P.W.1 Harish Chandra had not stated in his statement that complaint against him and his father was filed by the complainant maliciously, whereas to proved charge under Section 211 I.P.C. it is essential to establish that the criminal proceedings are instituted with intent to cause injury to any person or false charge is made against some one knowing that there was no just and lawful ground for such proceeding or charge against that person. The Court below has held that the complainant has failed to prove that the accused committed the

offence punishable under Section 211 I.P.C. whereas the D.W.1 Laxmi Datt has deposed on oath that he had filed the complainant *bona fide* with the hope of getting justice and he did not intend to lower the prestige of the complainant and his father. Therefore, the Judicial Magistrate, Dehradun, held the accused not guilty of the charge U/Ss 211/500 I.P.C. and acquitted him of the charges levelled against him.

7. Feeling aggrieved of the findings of the Court below, the present appeal has been filed.

8. I have heard Sri Neeraj Upreti, the learned counsel for the appellant, Sri C.D. Bahuguna, the learned counsel for respondent no. 1 and Sri Amit Bhatt, the learned Government Advocate for respondent no. 2 and I have gone through the entire records of the case.

9. Having considered all the facts and circumstances of the case and going through the materials placed on record, I find that no case is made out against the accused (respondent no.1 herein) for committing the offence punishable U/Ss 211 and 500 I.P.C. and the learned lower Court has committed no illegality, irregularity or impropriety. The findings of the learned lower Court are perfectly justified and the impugned judgment and order under appeal are liable to be affirmed.

10. In this view of the matter, the appeal is dismissed and the judgment and order under appeal are hereby affirmed.

Dated: April 25, 2007 **(Dharam Veer, J.)**

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